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Oracle America, Inc., and Oracle
International Corporation

12 UNITED STATES DISTRICT COURT
13
NORTHERN DISTRICT OF CALIFORNIA

14
15 ORACLE AMERICA, INC., a Delaware
corporation; ORACLE INTERNATIONAL
CORPORATION, a Delaware corporation

16 Plaintiffs,
v.

17 SMS SYSTEMS MAINTENANCE SERVICES,
INC., a Massachusetts corporation; and DOES 1-
50,

18 Defendants.

19 No.

20
**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

21
**(1) COPYRIGHT INFRINGEMENT;
(2) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
RELATIONS; AND
(3) UNFAIR COMPETITION**

1 Plaintiffs Oracle America, Inc. (“Oracle America”), and Oracle International
2 Corporation (“OIC”) (together, “Oracle” or “Plaintiffs”) for their Complaint against Defendant
3 SMS Systems Maintenance Services, Inc. (“SMS”) allege as follows based on their personal
4 knowledge as for themselves, and on information and belief as to the acts of others:

5 **I. INTRODUCTION**

6 1. SMS has distributed, and conspired with others to distribute, copyrighted,
7 proprietary Oracle software code without authorization. In conjunction with its provision of
8 hardware support services, SMS has provided or facilitated the provision of software patches,
9 updates, and bug fixes for Oracle’s proprietary Solaris operating system, and other technical
10 support files used on Oracle’s Sun-branded computers (collectively, “Solaris Updates”). SMS
11 has engaged in this misconduct by partnering with – and subcontracting software support
12 services for customers on Oracle hardware to – unauthorized third party software support
13 providers, including but not limited to [REDACTED] since at least
14 [REDACTED].

15 2. Oracle is the world’s leading supplier of enterprise hardware and software
16 systems, and related technical support and consulting services for those systems. Customers who
17 own Oracle hardware have the option to purchase an annual contract for technical support
18 services to be performed by Oracle for those hardware systems. As part of those support
19 services, Oracle makes available to customers Solaris Updates for the proprietary firmware and
20 operating system software that ships with and runs the hardware systems.

21 3. In most instances, Oracle delivers its technical support services for this
22 software and firmware over the internet. Customers that purchase a technical support agreement
23 from Oracle – either directly from Oracle or through a reseller authorized by Oracle to sell
24 Oracle support renewal contracts – receive a “Customer Support Identification” number (“CSI
25 number”) linked to the products covered by the support contract. The CSI number allows
26 customers to create login credentials to access Oracle’s secure support website. Using those
27 credentials, the licensed customer on active support may download Solaris Updates and firmware
28

1 updates for the hardware systems that are covered by the support agreement. The customer may
2 not share or use its access credentials for the benefit of others or for the benefit of unsupported
3 Oracle hardware – only customers who pay for and maintain a technical support agreement with
4 Oracle for the hardware at issue may download Oracle’s proprietary Solaris Updates and
5 firmware updates, and only for their own internal business use on specified computers.
6

7 4. SMS purports to offer support services related to Oracle’s Sun-branded
8 hardware systems. SMS sometimes contracts directly with customers to provide this support,
9 and on information and belief, at other times contracts indirectly as a subcontractor to other
10 entities, including [REDACTED]. While a customer may engage a third party – instead of Oracle – to
11 provide support services on Oracle hardware, neither the third party nor the customer can access
12 or use Oracle’s support website to support that hardware. In particular, neither the third party
13 nor the customer may use official, Oracle-authored Solaris Updates and firmware updates to
14 support the Oracle software running the hardware because those Solaris Updates and firmware
15 updates are Oracle’s copyrighted and/or proprietary intellectual property. As third party support
16 providers not authorized or licensed by Oracle, SMS and the companies like [REDACTED] that it
17 contracts with have no rights to use Oracle’s proprietary software as part of their support service
18 offerings.

19 5. SMS ignored these fundamental rules and restrictions as part of its scheme
20 to sell its own support services for Oracle hardware to customers that needed access to Oracle’s
21 proprietary patches and updates. Neither SMS, nor its partners, nor the end customers that
22 contracted with it directly or indirectly had any right to access, download, copy, or distribute
23 Solaris Updates or firmware updates from Oracle for these illicit purposes. Yet SMS nonetheless
24 directly or indirectly provided its end customers – including but not limited to [REDACTED]
25 [REDACTED] and [REDACTED] – with Oracle’s Solaris Updates and/or firmware
26 updates.

27 6. Neither SMS nor its partners had permission from Oracle to distribute
28 copies of Oracle’s copyrighted software to anyone, nor to induce others, including their

1 customers, to copy and distribute Oracle's copyrighted software. SMS's activities infringe
 2 Oracle's intellectual property rights and interfere with Oracle's prospective economic relations.
 3 Oracle brings this lawsuit to stop SMS's wrongful conduct.

4 **II. THE PARTIES**

5 7. Plaintiff Oracle America is a Delaware corporation duly authorized to do
 6 business in the State of California, with its principal place of business in Redwood City,
 7 California. Oracle develops and licenses certain intellectual property, including copyrighted
 8 software programs, and provides related support and consulting services to its licensed
 9 customers. In January 2010, Oracle completed its acquisition of Sun Microsystems, Inc.
 10 ("Sun"),¹ which was renamed Oracle America. Plaintiff Oracle America continues to hold all of
 11 Sun's interest, rights, and title to the copyrights for Solaris 8, 9 and 10 and the rights to bring
 12 claims for infringement of those copyrights.

13 8. Plaintiff OIC is a California corporation with its only place of business in
 14 Redwood City, California. OIC owns and licenses certain intellectual property, including
 15 copyrighted software programs. OIC and Oracle America together hold all interest, rights, and
 16 title to the copyright for Solaris 11 and the right to bring claims for infringement of that
 17 copyright. OIC, either on its own or together with Oracle America (depending on the
 18 registration), holds all interest, rights, and title to the copyrights for Oracle System Firmware and
 19 the right to bring claims for infringement of those copyrights.

20 9. SMS is a Massachusetts corporation with its headquarters in Charlotte,
 21 North Carolina and sixty service centers located throughout the United States, including five
 22 service centers in California. SMS holds itself out as a third party maintenance provider that
 23 provides support for, among other things, Oracle's Sun-branded hardware.

25 _____
 26 1 Sun developed and sold computer hardware and the Solaris operating system which runs that
 27 hardware. Sun computers, which Oracle continues to sell under the Sun brand name, may be
 referred to as Oracle or Sun computer hardware interchangeably throughout this Complaint.

1 10. Oracle is currently unaware of the true names and capacities of Does 1
2 through 50, inclusive, whether individual, partnership, corporation, unincorporated association,
3 or otherwise. Due to the surreptitious nature of Defendants' actions, and the complicated nature
4 of their scheme, the identities of Does 1 through 50 have been concealed from Oracle, preventing
5 Oracle from identifying them by name. After discovery, which is necessary to ascertain the true
6 names and capacities of Does 1 through 50, Oracle will amend its complaint to allege the
7 necessary identifying details.

8 11. SMS is subject to personal jurisdiction in California because it has five
9 service centers in California, including one in Santa Clara in this District, where its employees
10 address customer support requests. Accordingly, SMS's contacts with the state are substantial,
11 continuous, and systematic. In addition, SMS is subject to specific jurisdiction here because it
12 has committed wrongful intentional acts in this state, expressly aimed at Oracle, which SMS
13 knew or should have known is also a resident of California, and caused harm that it knew or
14 should have known was likely to be suffered by Oracle in Redwood City, California. SMS's
15 wrongful acts include entering into a conspiracy with its partner, [REDACTED], a California corporation
16 with its principal place of business in Sunnyvale, California, to harm Oracle. [REDACTED] ran the
17 conspiracy from, and committed many acts in furtherance of it in, Sunnyvale, California, where
18 its CEO [REDACTED] is based, and because of the conspiracy, those acts are also deemed the
19 acts of SMS. SMS also willfully infringed Oracle's copyrights, knowing that Oracle is resident
20 in this District in California, and directing its harmful activities at Oracle.

21 12. At all material times, each of the Defendants, including Does 1 through
22 50, was the agent, servant, employee, partner, joint venturer, representative, subsidiary, parent,
23 affiliate, alter ego, or co-conspirator of the others, had full knowledge of and gave substantial
24 assistance to the alleged activities, and in so doing the things alleged, each was acting within the
25 scope of such agency, service, employment, partnership, joint venture, representation, affiliation,
26 or conspiracy, and each is legally responsible for the acts and omissions of the others.

1 **III. JURISDICTION**

2 13. Oracle's first claim for relief arises under the Federal Copyright Act,
 3 17 U.S.C. §§ 101 *et seq.* Accordingly, this Court has subject matter jurisdiction over this action
 4 pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338.

5 14. This Court has supplemental subject matter jurisdiction over the pendant
 6 state law claims under 28 U.S.C. § 1337, because these claims are so related to Oracle's claim
 7 under federal law that they form part of the same case or controversy and derive from a common
 8 nucleus of operative facts.

9 **IV. VENUE**

10 15. Venue in this District is appropriate because SMS committed, either
 11 directly or is deemed to have committed as a co-conspirator, a substantial amount of the
 12 wrongful intentional acts here, which it also expressly aimed at Oracle. SMS knew or should
 13 have known Oracle resides in this District, and caused harm that it knew or should have known
 14 Oracle would likely suffer in this District. As a result, SMS would be amenable to personal
 15 jurisdiction if this District were a separate state, and therefore venue in this District is appropriate
 16 under 28 U.S.C. § 1400(a).

17 **V. DIVISION / INTRADISTRICT ASSIGNMENT**

18 16. Because this action alleges, among other things, claims for copyright
 19 infringement, it is an intellectual property action and may be assigned on a district-wide basis
 20 pursuant to Civil L.R. 3-2(c).

21 **VI. FACTUAL ALLEGATIONS**

22 **A. Oracle's Computer Systems and Support Materials**

23 17. Oracle develops, manufactures, markets and distributes enterprise business
 24 hardware and software systems, and provides related technical support and consulting services.
 25 The hardware systems that Oracle develops and distributes involve several components, all of
 26 which Oracle supplies. In a simplified view, the foundation of the system (or "stack" as it is
 27 sometimes called) is typically storage and servers, such as Oracle's Sun servers. The server
 28 requires an operating system to run it, such as Oracle's Solaris operating system, which is an

1 analog to Microsoft's Windows operating system for personal computers. A typical
 2 configuration would also employ a database to manage business data, middleware to allow the
 3 database to interact with various applications that provide the business logic to be performed by
 4 the system, and the applications themselves, such as human resources software for payroll
 5 processing or financials software for financial reporting.

6 18. Oracle's comprehensive line of Sun server systems provides world-class
 7 performance for businesses of all sizes, and includes some of the most reliable, scalable, and
 8 powerful systems in the industry. Oracle also develops and licenses the Solaris operating system
 9 and related firmware to run its Sun servers. Solaris is one of the most advanced operating
 10 systems available for enterprise use. It provides innovative, built-in features that allow for high
 11 availability, advanced security, efficiency, and industry-leading scalability/performance, and are
 12 targeted at business and public sector customers.

13 19. As is typical in the computer industry, Oracle offers technical support
 14 services for its hardware systems, including the Solaris operating system. For example,
 15 customers who own Oracle/Sun hardware may also purchase technical support services from
 16 Oracle which entitle those customers to Solaris Updates for their Oracle/Sun hardware, operating
 17 systems and firmware that run on that hardware. Solaris Updates and firmware updates are
 18 available to customers with active support contracts with Oracle to download from Oracle's
 19 password-protected, secure customer support website. Customers choose the Solaris Update or
 20 firmware updates to apply based on the issues that they seek to address and the status of their
 21 particular system at the time the issue arises.

22 20. Typically, Oracle's technical support service agreements are for annual
 23 periods of twelve months. The customer may renew the agreement for additional twelve-month
 24 terms subject to Oracle's then current pricing and support policies.

25 **B. SMS, Independently and Through Its Partners, Provided**
 26 **Oracle Software To Others Who Were Not Entitled To It**

27 21. SMS advertises itself as "one of the most respected independent Oracle[®]
 28 (Sun[®]) hardware maintenance and support providers in the world." SMS states that it "offers

1 more than a simple break/fix service,” and that its “Sun Hardware Maintenance and Support”
2 includes “Solaris certified OS technical support.”
3

4 22. In 2013, Oracle became concerned that SMS was distributing Oracle’s
5 copyrighted Solaris Updates and firmware updates to SMS’s customers in an unlawful attempt to
6 use copyright infringement to poach Oracle’s customers. On May 31, 2013, Oracle wrote to
7 SMS “to raise concerns that Oracle has regarding the manner in which SMS is providing third
8 party support on Oracle Sun servers running the Solaris operating system. SMS has recently bid
9 for and won certain support contracts that, from Oracle’s perspective, have to include the
10 provision of support on the Solaris operating system, which only Oracle can provide due to the
11 need to use Oracle’s intellectual property to deliver those services.” In particular, Oracle
12 expressed concern that SMS was providing these updates to Fidelity Information Services, Inc.,
13 ACNielsen, and potentially other customers.

14 23. In a letter dated July 2, 2013, SMS specifically denied “that SMS
15 improperly provided Oracle proprietary software and firmware patches and updates to SMS
16 customers FIS/Fidelity (‘FIS’) and ACNielsen (‘Nielsen’)” and more broadly denied that it
17 provided support for operating systems or other software. SMS also refused Oracle’s request to
18 produce support call records and email communications with FIS and Nielsen that would have
19 allowed Oracle to test that denial.

20 24. Approximately two weeks later, Oracle filed suit against Terix and other
21 parties for copyright infringement, violations of the Computer Fraud and Abuse Act, violations
22 of the Lanham Act, breach of contract, intentional interference with prospective economic
23 advantage, and unfair competition. Oracle’s complaint centered on Terix’s unauthorized
24 provision of Solaris operating system support to customers on Oracle hardware.

25 25. During the course of discovery in the Terix case, Oracle learned that
26 SMS’s denials in July [REDACTED] and that SMS [REDACTED] had entered into a conspiracy,
27 embodied in their [REDACTED] as well as in other
28 agreements, to execute a [REDACTED] targeting Oracle’s customers. The genesis of the

1 conspiracy was SMS's desire to [REDACTED]
 2 [REDACTED]
 3 [REDACTED]. SMS's [REDACTED] initiated contact with [REDACTED]
 4 [REDACTED] at the end of [REDACTED] or start of [REDACTED] to enter into an
 5 arrangement in which SMS would [REDACTED], and SMS would [REDACTED]
 6 [REDACTED]. The first customer they targeted was [REDACTED]
 7 but in [REDACTED] words, that customer was just [REDACTED]
 8 [REDACTED]

9 26. [REDACTED] was an Oracle customer that wanted both hardware and software
 10 support for its Oracle servers. When [REDACTED] support contract with Oracle was up for renewal in
 11 [REDACTED] SMS presented a combined bid to [REDACTED] for hardware and software support. The software
 12 support was to be provided by [REDACTED] through SMS and pursuant to SMS's direction and control
 13 under the [REDACTED], and was to include the provision of Solaris
 14 Updates, which are Oracle's copyrighted software, which neither SMS nor [REDACTED] had
 15 authorization to provide.

16 27. As [REDACTED] was considering terminating support with Oracle, Oracle
 17 repeatedly advised [REDACTED] that without support, [REDACTED] would be unable to obtain Solaris Updates.
 18 Each time, [REDACTED] forwarded Oracle's emails to SMS, which responded that SMS and [REDACTED] would
 19 together be able to provide the requested Solaris Updates, even though that was unlawful.

20 28. [REDACTED] terminated support with Oracle in [REDACTED] in reliance on SMS's
 21 representations that it and [REDACTED] would be able to provide the Solaris Updates [REDACTED] needed for its
 22 servers and that it was lawful for them to do so. The [REDACTED] contract was one of [REDACTED]
 23 [REDACTED].

24 29. In practice, [REDACTED] generally requested Solaris Updates by [REDACTED]
 25 [REDACTED]
 26 [REDACTED]. As one example, on March 14, 2014, [REDACTED]
 27 [REDACTED]

1 [REDACTED] [REDACTED] then forwarded the request to [REDACTED]
 2 [REDACTED], who [REDACTED]
 3 [REDACTED].
 4

5 30. The SMS-[REDACTED] conspiracy worked generally the same way for their other
 6 common customers, including at least [REDACTED] SMS identified [REDACTED],
 7 SMS presented [REDACTED], SMS falsely reassured [REDACTED]
 8 [REDACTED], and SMS directed [REDACTED]
 9 [REDACTED].

10 31. SMS knew that this provision of Solaris Updates and firmware updates
 11 was improper and copyright infringement, as demonstrated by its denial to Oracle that it was
 12 engaging in that conduct, as well as by other internal SMS documents that show SMS's
 13 knowledge that [REDACTED]
 14 [REDACTED]. For example, in a November 1, 2012 internal email, an SMS Area
 15 Sales Manager admitted that [REDACTED]
 16 [REDACTED] Nonetheless, SMS conspired with [REDACTED] and participated in, directed and contributed
 17 to this infringement to obtain these customers and induce them to cancel support with Oracle.
 18 This conspiracy continued well into [REDACTED]

19 32. On information and belief, SMS has also conspired (and partnered) with
 20 other companies to provide software support services related to the Solaris operating system in a
 21 similar fashion to its conspiracy with [REDACTED] These software support services included providing
 22 Solaris Updates and firmware updates without Oracle's authorization. SMS knew, and entered
 23 into these agreements so that, its co-conspirators and partners would provide Solaris Updates and
 24 firmware updates to customers with which it had jointly contracted for the provision of Solaris
 25 support. Customers could – and did – submit requests for Solaris Updates and firmware updates
 26 to SMS, which SMS passed along to its other partners.

27 33. On June 10, 2015, Terix (and its affiliated co-defendants) stipulated to the
 28 entry of judgment against them, which established liability on all of Oracle's claims and awarded

1 Oracle damages. The stipulated judgment enjoined Terix from accessing, using, or distributing
 2 Oracle's proprietary Oracle/Sun software and support materials, including Solaris Updates and
 3 firmware updates, in specified manners. It also prohibited Terix from engaging, contracting for,
 4 or otherwise utilizing any third party – such as SMS – to give, sell, or provide such proprietary
 5 software and support materials to customers. Pursuant to the stipulated judgment, Terix
 6 provided a statement that "TERIX HAS NO LEGAL RIGHT TO PROVIDE ANY ORACLE
 7 SOFTWARE, BUG FIXES, PATCHES, UPDATES, UPGRADES, OR LICENSES FOR ANY
 8 SUCH SOFTWARE OR OTHER PRODUCT, OR ANY ORACLE SUPPORT MATERIALS.
 9 TERIX IS NOT AUTHORIZED TO PROVIDE, DISTRIBUTE OR MAKE AVAILABLE ANY
 10 SUCH ORACLE SOFTWARE, LICENSING, OR SUPPORT MATERIALS." This statement,
 11 consistent with Oracle's allegations in its suit against Terix and the instant action, recognizes the
 12 unlawfulness of SMS and [REDACTED] of Solaris Updates and firmware updates
 13 to SMS's customers.

14 34. The Solaris operating system is copyrighted, and Solaris Updates include
 15 protectable expression contained in the registered works. In addition, Oracle's firmware updates
 16 are proprietary software, and Oracle's System Firmware is copyrighted. SMS has copied or
 17 contributed to the copying of protectable expression contained in the registered works.
 18 Customers may have access to Solaris Updates and firmware updates only if they have a valid
 19 support agreement with Oracle for the servers at issue. SMS nevertheless falsely tells Oracle
 20 hardware customers that they do not need to purchase an annual support agreement with Oracle
 21 to obtain Solaris Updates or firmware updates, and that SMS (directly, or through its partners,
 22 such as [REDACTED] can provide Solaris and firmware support. In reality, customers that have
 23 canceled support for Oracle on hardware and contracted with SMS for support on that hardware
 24 do not have entitlement to obtain Solaris Updates or firmware updates for that hardware.
 25 Oracle's technical support policies provide, and provided at all relevant times, that "Customers
 26 with unsupported hardware systems are not entitled to download or receive updates, maintenance
 27

1 releases, updates, telephone assistance, or any other technical support services for unsupported
 2 hardware systems.”
 3

4 **C. SMS’s Wrongful Conduct Injured Oracle**

5 35. SMS willfully, intentionally, and knowingly engaged in the wrongful
 conduct alleged in this Complaint, including copyright infringement, intentional interference
 6 with prospective economic relations, and other unfair business practices.
 7

8 36. As a direct and proximate result of these acts, Oracle has suffered injury,
 damage, loss, and harm, including, but not limited to, loss of profits from sales to current and
 9 potential customers of Oracle support services and/or licenses for Oracle software programs.
 10

11 **First Claim for Relief**

12 **Copyright Infringement**

13 37. Oracle incorporates each of the allegations in preceding paragraphs 1-36
 of this Complaint as though fully set forth here.

14 38. Oracle owns valid and enforceable copyrights in all of its software and
 support materials, including the Solaris Updates and firmware updates, which are creative works
 15 of original authorship. Oracle has Certificates of Registration that cover many of the Solaris
 16 Updates and firmware updates taken and copied, directly or indirectly by SMS and others acting
 17 in concert with it. Throughout this Complaint, including in this claim for relief, the term
 18 “software” includes without limitation the Solaris operating system, Solaris Updates, Oracle
 19 System Firmware, and firmware updates.
 20

21 39. Oracle holds all of Sun’s interest, rights, and title to the copyrights for
 Solaris 8, 9, and 10, and all interest, rights, and title to the copyright for Solaris 11. Oracle holds
 22 all interest, rights, and title to the copyrights for Oracle System Firmware.
 23

24 40. Oracle owned one or more exclusive rights in certain copyrights at issue in
 this case, including but not limited to the works listed in paragraph 41, at a point in time during
 25 which SMS infringed those exclusive rights.
 26

1 41. SMS has infringed copyrights in Oracle software, including the software
 2 covered by the certificates of registration identified, dated, and numbered as follows:
 3

4 Title of Work	5 Date of Registration	6 Registration Number
Solaris 8 (SPARC Platform Edition)	June 19, 2000	TX 5-138-319
Solaris 8 (Intel Platform Edition)	June 19, 2000	TX 5-196-384
Solaris 9 operating system	August 7, 2002	TX 5-586-147
Solaris 10 operating system	April 19, 2005	TX 6-086-753
Solaris 11 operating system	December 18, 2014	TX 8-021-394
Oracle System Firmware 6.7.10	June 19, 2014	TX 7-851-653
Oracle System Firmware 7.3.0.a	June 19, 2014	TX 7-851-666
Oracle System Firmware 8.0.0.e	June 19, 2014	TX 7-851-615
Oracle System Firmware 8.0.4.b	June 19, 2014	TX 7-851-695
Oracle System Firmware 8.1.4.h	June 19, 2014	TX 7-851-710
Oracle System Firmware 9.0.0.d	June 19, 2014	TX 7-851-699
Oracle System Firmware 9.0.1.f	June 19, 2014	TX 7-851-513
Oracle System Firmware 9.0.0.i	June 19, 2014	TX 7-851-509
Oracle System Firmware 9.1.0.i	June 19, 2014	TX 7-851-514

12 42. These registrations generally cover versions of Oracle's Solaris operating
 13 system and other software, including the Solaris Updates thereto, as well as versions of Oracle
 14 System Firmware, including firmware updates. SMS and others acting in concert with it copied
 15 and distributed versions of Oracle's Solaris operating system and other software, including the
 16 Solaris Updates thereto, as well as versions of Oracle System Firmware, including firmware
 17 updates, without a license.

18 43. Through the acts alleged above, SMS and those acting in concert with it
 19 have violated Oracle's exclusive rights to reproduce and make copies of its copyrighted software,
 20 including materials covered by the registrations and pending registrations listed above by, among
 21 other things, downloading, copying, and distributing Oracle's copyrighted software onto their
 22 and their customers' computers in violation of 17 U.S.C. § 106.

23 44. SMS and those acting in concert with it were not authorized to copy,
 24 download, reproduce, create derivative works from, or distribute Oracle's copyrighted software
 25 except as authorized by and in support of a specifically licensed use, and with respect only to
 26 software for which they had a current right to have and use.

45. In addition to directly infringing Oracle's exclusive rights, SMS has contributorily and/or vicariously infringed Oracle's exclusive rights in the software by controlling, directing, intentionally encouraging, inducing, or materially contributing to the copying, distribution, and/or creation of derivative works from Oracle's copyrighted software. SMS also obtained a direct financial benefit from the above alleged infringing activities while declining to exercise its right to stop it or limit it.

46. SMS and those acting in concert with it knew or should have known that copying, distributing, and creating derivative works of and from Oracle's software – which they had no license to copy, distribute, or create derivative works from – or controlling, directing, intentionally encouraging, inducing, or materially contributing to others' efforts to do so, infringed Oracle's exclusive rights in that software.

47. Oracle is entitled to damages from SMS in an amount to be proven at trial, including profits attributable to the infringement not taken into account in computing actual damages under 17 U.S.C. § 504(b). Oracle is entitled to statutory damages under 17 U.S.C. § 504(c) based on SMS’s infringements after the dates of copyright registration.

48. SMS's infringement of Oracle's exclusive rights has also caused Oracle irreparable injury. Unless restrained and enjoined, SMS will continue to commit such acts. Oracle's remedies at law are not adequate to compensate it for these inflicted and threatened injuries, entitling it to remedies, including injunctive relief as provided by 17 U.S.C. § 502, and an order impounding or destroying any and all infringing materials pursuant to 17 U.S.C. § 503.

Second Claim for Relief

Intentional Interference With Prospective Economic Relations

49. Oracle incorporates each of the allegations in preceding paragraphs 1-36 of this Complaint as though fully set forth here.

50. Oracle was in an economic relationship with customers, including but not limited to [REDACTED] and [REDACTED] that, if not impeded by SMS, would have resulted in an economic benefit to Oracle. Namely, these customers owned Oracle/Sun

computer hardware, were long-time customers of support services from Oracle for that hardware, and would otherwise have renewed their support services agreements with Oracle.

51. SMS knew of these economic and prospective economic relationships between Oracle and its customers, and intended to disrupt them. SMS engaged in wrongful conduct by, among other things, conspiring with [REDACTED] engaging in unfair competition, and misrepresenting to its customers that they did not need a support contract with Oracle to be authorized to obtain Solaris Updates and firmware updates.

52. Oracle's relationship with these customers was disrupted when these customers decided not to renew support agreements with Oracle and instead entered into support agreements with SMS. Oracle was damaged as a result of the disruption of these relationships in an amount to be proven at trial. SMS's wrongful conduct was a substantial factor in causing this harm to Oracle.

Third Claim for Relief

Unfair Competition – Cal. Bus. & Prof. Code § 17200

53. Oracle incorporates each of the allegations in preceding paragraphs 1-36 and 49-52 of this Complaint as though fully set forth here.

54. SMS has engaged in unlawful and unfair business acts or practices, including intentional interference with prospective economic relations and other illegal acts and practices as alleged above, all in an effort to gain unfair competitive advantage over Oracle.

55. These unlawful and unfair business acts or practices were committed pursuant to business activity related to providing maintenance and support services for Oracle's computer hardware and software.

56. SMS's acts and conduct constitute unlawful and unfair competition as defined by California Bus. & Prof. Code §§ 17200, *et seq.* SMS is also liable for its co-conspirators' conduct under Section 17200, including its co-conspirator [REDACTED]

57. SMS's conduct constitutes violations of the common law. SMS's conduct is also unfair.

58. SMS devised its scheme by misrepresenting to customers the support that SMS (directly, or indirectly through its partners) could lawfully provide for the purposes of inducing owners of Oracle/Sun computer hardware not to enter into support agreements with Oracle, but rather to enter into profitable support contracts with SMS, or other parties affiliated with SMS. As described above, Oracle has lost money and property and suffered injury in fact as a result of SMS's unlawful business acts and practices.

59. SMS has improperly and unlawfully taken commercial advantage of Oracle's investments in its computers, support delivery infrastructure, and customer relationships. In light of SMS's conduct, it would be inequitable to allow SMS to retain the benefit of the funds obtained through the unauthorized and unlawful use of that property.

60. SMS's unfair business practices have unjustly minimized Oracle's competitive advantages and have caused and are causing it to suffer damages.

61. As a result of such unfair competition, Oracle has also suffered irreparable injury and, unless SMS is enjoined from such unfair competition, will continue to suffer irreparable injury, and Oracle has no adequate remedy at law.

62. SMS should be compelled to restore any and all revenues, earnings, profits, compensation, and benefits it may have obtained in violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and should be enjoined from further unlawful and unfair business practices.

Prayer for Relief

WHEREFORE, Oracle respectfully prays for the following:

A. For a preliminary and permanent injunction restraining SMS, its officers, agents, servants, employees, and attorneys, and those in active concert or participation with any of them, from the following:

(1) Copying, distributing, using, or creating derivative works from – or conspiring with or facilitating others to do the same – Oracle’s software, firmware, or support materials in any way, including for any business purpose, except as allowed by express license from Oracle;

(2) Facilitating, conspiring with others to, or encouraging the downloading of any Oracle software, firmware, or support materials from any Oracle website for, or on behalf of, any customer or party that does not have a valid, existing, and currently-Oracle-supported license for the specific materials being downloaded from Oracle entitling the customer to have and use that software, firmware, or support materials;

(3) Facilitating, conspiring with others to, or encouraging the copying, distribution, or use of any Oracle software, firmware, or support materials by, for, or on behalf of, any customer or party who did not have a current, valid, existing support license from Oracle entitling that customer or party to have and use the software, firmware, and support materials at the time they were downloaded or obtained by or on behalf of the customer or party;

(4) Otherwise engaging in acts of unfair competition, unfair practices, or copyright infringement against Oracle;

B. That the Court order SMS to file with the Court and serve on Oracle within 30 days after the service on SMS of such injunction a report in writing, under oath, setting forth in detail the manner and form in which SMS has complied with the injunction;

C. For an Order directing SMS to return Oracle's property, including, without limitation, Oracle's confidential, proprietary, and/or copyrighted software, firmware, and support materials, that SMS took from Oracle, as set forth in this Complaint;

D. For an Order impounding or destroying and all infringing materials pursuant to 17 U.S.C. § 503;

E. For an Order awarding Oracle punitive damages in a sum to be determined at trial;

F. For restitution of all ill-gotten gains unjustly obtained and retained by SMS through the acts complained of here;

G. For an Order finding a constructive trust for Oracle's benefit, consisting of all revenues received by SMS from the wrongful conduct which should rightfully have been received by Oracle and all profits derived from that wrongful conduct, and directing SMS to pay

all such sums to Oracle;

- H. For damages to be proven at trial;
 - I. For statutory damages pursuant to 17 U.S.C. § 504;
 - J. For prejudgment interest;
 - K. For an Order awarding Oracle its attorneys' fees and costs; and
 - L. For an Order awarding Oracle such other and further relief as the Court

deems just and proper.

DATED: November 17, 2015

Morgan, Lewis & Bockius LLP

By: _____ /s/ Thomas S. Hixson
Thomas S. Hixson
Attorneys for Plaintiffs
Oracle America, Inc. and
Oracle International Corporation

1 DEMAND FOR JURY TRIAL

2 In accordance with Fed. R. Civ. P. 38(b), Plaintiffs Oracle America, Inc., and
3 Oracle International Corporation demand a trial by jury on all issues triable by a jury.

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5 DATED: November 17, 2015

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7 Morgan, Lewis & Bockius LLP

8

9 By: _____ /s/ Thomas S. Hixson
10 Thomas S. Hixson
11 Attorneys for Plaintiffs
12 Oracle America, Inc. and
13 Oracle International Corporation

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